



DEPARTMENT OF DEFENSE

PRIVACY PROGRAM

AUGUST 1983

**DEPUTY ASSISTANT SECRETARY OF DEFENSE
(ADMINISTRATION)**



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

COMPTROLLER
(Administration)

DoD 5400.11-R

August 31, 1983

FOREWORD

This Regulation is issued under the authority of DoD Directive 5400.11, "Department of Defense Privacy Program, " June 9, 1982. Its purpose is to prescribe uniform procedures for implementation of the Defense Privacy Program.

This Regulation applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to as "DoD Components"). It applies to the National Security Agency only to the extent that its provisions are not inconsistent with Public Laws 86-36 and 88-290.

The provisions of this Regulation shall be applicable by contract or other legally binding action to U.S. Government contractors whenever a DoD contract is let for the operation of a system of records or a portion of a system of records. For purposes of responsibilities under DoD Directive 5400.11, contractor employees shall be considered employees of the contracting DoD Component.

This Regulation does not apply to:

1. **Requeests** for information made under the Freedom of Information Act (DoD Directive 5400.7). These are processed in accordance with DoD 5400.7-R, "DoD Freedom of Information Act Program," December 1980.

2. Requests for information from systems of records controlled by the Office of **Personnel** Management (OPM), although maintained by a DoD Component. These are processed under the applicable parts of the OPM'S Federal **Personnel** Manual.

3. Requests for personal information from the General Accounting Office. These are processed in accordance with DoD Directive 7650.1, "General Accounting Office Access to Records," August 26, 1982.

4. Requests for personal information from Congress. These are processed in accordance with DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978, except for those specific provisions in Chapter 4 of this Regulation.

This Regulation is effective immediately and is mandatory for use by all DoD Components. Heads of DoD Components may issue supplementary instructions only when necessary to provide for unique requirements within their Components. Such instructions may not conflict with the provisions of this Regulation.

Forward recommended changes through appropriate channels to:

Director, Defense Privacy Office
OSD Mail Room, Room 3A-948
The Pentagon
Washington, **D.C.** 20301

DoD Components may obtain copies of this Regulation through their own publications channels. Other federal agencies and the public may obtain copies from the Director, U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.



D. O. Cooke
Deputy Assistant Secretary of Defense

TABLE OF CONTENTS

	<u>Page</u>
Foreword	i
Table of Contents	iii
R e f e r e n c e s	x
Definitions	xi
 CHAPTER 1 - SYSTEMS OF RECORDS	 1-1
 <u>SECTIONS</u>	
A. GENERAL	1-1
1. System of records	1-1
2. Retrieval practices	1-1
3. Relevance and necessity	1-1
4. Authority to establish systems of records	1-1
5. Exercise of First Amendment rights	1-1
6. Systems manager's evaluation	1-2
7. Discontinued information requirements	1-2
B. STANDARDS OF ACCURACY	1-2
1. Accuracy of information maintained	1-2
2. Accuracy determinations before dissemination	1-2
C. GOVERNMENT CONTRACTORS	1-3
1. Applicability to government contractors	1-3
2. Contracting procedures	1-4
3. Contractor compliance	1-4
4. Disclosure of records to contractors	1-4
D. SAFEGUARDING PERSONAL INFORMATION	1-4
1. General responsibilities	1-4
2. Minimum standards	1-4
3. Records disposal	1-5
 CHAPTER 2 - COLLECTING PERSONAL INFORMATION	 2-1
 <u>SECTIONS</u> ,	
A. GENERAL CONSIDERATIONS	2-1
1. Collect directly from the individual	2-1
2. Collecting Social Security Numbers (SSNS)	2-1
3. Collecting personal. information from third parties	2-2
4. Privacy Act Statements	2-2
5. Mandatory as opposed to voluntary disclosures	2-3

	<u>Page</u>
B. FORMS	2-3
1. DoD forms	2-3
2. Forms issued by non-DoD activities	2-3
 CHAPTER 3 - ACCESS BY INDIVIDUALS	 3-1
<u>SECTIONS</u>	
A. INDIVIDUAL ACCESS TO PERSONAL INFORMATION	3-1
1. Individual access	3-1
2. Individual requests for access	3-1
3. Verification of identity	3-1
4. Granting individual access to records	3-2
5. Illegible, incomplete, or partially exempt records	3-2
6. Access to medical records	3-2
7. Access to information compiled in anticipation of civil action	3-4
8. Access to investigatory records	3-4
9. Nonagency records	3-4
10. Relationship between the Privacy Act and the Freedom of Information Act	3-5
11. Time limits	3-6
12. Privacy case files	3-6
 B. DENIAL OF INDIVIDUAL ACCESS	 3-6
1. Denying of individual access	3-6
2. Other reasons to refuse access	3-6
3. Notifying the individual	3-7
4. DoD Component appeal procedures	3-7
5. Denial of appeals by failure to act	3-8
6. Denying Access to OPM records held by DoD Components	3-8
 C. AMENDMENT OF RECORDS	 3-8
1. Individual review and correction	3-8
2. Amending records	3-8
3. Burden of proof	3-9
4. Identification of requesters	3-9
5. Limits on attacking evidence previously submitted	3-9
6. Sufficiency of a request to amend	3-9
7. Time limits	3-9
8. Agreement to amend	3-9
9. Notification of previous recipients	3-10
10. Denying amendment	3-10
11. DoD Component appeal procedures	3-10
12. Amendment of OPM records held by DoD Components	3-10
13. Statement of disagreement submitted by individuals	3-11
14. Maintaining statements of disagreement	3-11
15. DoD Component summaries of reasons for refusing to amend	3-11
16. Privacy Case Files	3-12

D. REPRODUCTION FEES	Page 3-13
1. Assessing fees	3-13
2. No minimum fees authorized	3-14
3. Prohibited fees	3-14
4. Waiver of fees	3-14
5. Fees for Members of Congress	3-14
6. Reproduction fees computation	3-14
CHAPTER 4 - DISCLOSURE OF PERSONAL INFORMATION TO OTHER AGENCIES AND THIRD PARTIES	4-1
<u>SECTIONS</u>	
A. CONDITIONS OF DISCLOSURE	4-1
1. Disclosures to third parties	4-1
2. Disclosures among DoD Components	4-1
3. Disclosures outside the Department of Defense	4-1
4. Validation before disclosure	4-1
B. NONCONSENSUAL DISCLOSURES	4-2
1. Disclosures within the Department of Defense	4-2
2. Disclosures under DoD 5400.7-R	4-2
3. Personal information that is normally releasable	4-2
4. Release of home addresses and home telephone numbers	4-4
5. Disclosures for established routine uses	4-5
6. Disclosures to the Bureau of Census	4-5
7. Disclosures for statistical research and reporting	4-6
8. Disclosures to the National Archives and Records Service (NARS), General Services Administration	4-6
9. Disclosures for law enforcement purposes	4-6
10. Emergency disclosures	4-7
11. Disclosures to Congress and the General Accounting Office	4-7
12. Disclosures under court orders	4-8
13. Disclosures to consumer reporting agencies.	4-8
C. DISCLOSURES TO COMMERCIAL ENTERPRISES	4-9
1. General policy	4-9
2. Release of personal information	4-9
D. DISCLOSURES TO THE PUBLIC FROM HEALTH CARE RECORDS	4-10
1. Section applicability	4-10
2. General disclosure	4-10
3. Individual consent	4-10
4. Information that may be released with individual consent	4-10
5. Disclosures to other government agencies	4-11

	<u>Page</u>
E. DISCLOSURE ACCOUNTING	4-11
1. Disclosure accountings	4-11
2. Contents of disclosure accountings	4-11
3. Methods of disclosure accounting	4-11
4. Accounting for mass disclosures	4-11
5. Disposition of disclosures accounting records	4-12
6. Furnishing disclosures accountings to the individual	4-12
 CHAPTER 5 - EXEMPTIONS	 5-1
<u>SECTIONS</u>	
A. USE AND ESTABLISHMENT OF EXEMPTIONS	5-1
1. Types of exemptions	5-1
2. Establishing exemptions	5-1
3. Blanket exemption for classified material	5-1
4. Provisions from which exemptions may be claimed	5-2
5. Use of exemptions	5-2
6. Exempt Records in nonexempt systems	5-2
 B. GENERAL EXEMPTIONS	 5-2
1. Use of the general exemptions	5-2
2. Access to records for which a (j)(2) general exemption is claimed	 5-3
 c. SPECIFIC EXEMPTIONS	 5-4
1. Use of the specific exemptions	5-4
2. Promises of confidentiality	5-4
3. Access to records for which specific exemptions are claimed	 5-4
 CHAPTER 6 - PUBLICATION REQUIREMENTS	 6-1
<u>SECTIONS</u>	
A. FEDERAL REGISTER PUBLICATION	6-1
1. What must be published in the <u>Federal Register</u>	6-1
2. The effect of publication in the <u>Federal Register</u>	6-1
3. DoD Component rules	6-1
4. Submission of rules for publication	6-1
5. Submission of exemption rules for publication	6-1
6. Submission of system notices for publication	6-2
 B. EXEMPTION RULES	 6-2
1. General procedures	6-2
2. Contents of exemption rules	6-3

C.	SYSTEMS NOTICES	<u>Page</u> 6-3
1.	Contents of system notices	6-3
2.	System identification	6-4
3.	System name	6-4
4.	System location	6-4
5.	Categories of individuals covered by the system	6-5
6.	Categories of records in the system	6-5
7.	Authority for maintenance of the system	6-5
8.	Purpose or purposes	6-6
9.	Routine uses	6-6
10.	Policies and practices for storing, retrieving, accessing, retaining and disposing of records	6-6
11.	System manager or managers and address	6-7
12.	Notification procedures	6-7
13.	Record access procedures	6-7
14.	Contesting record procedures	6-8
15.	Record source categories	6-8
16.	System exempt from certain provisions of the Act	6-9
17.	Maintaining the master DoD system notice registry	6-9
D.	NEW AND ALTERED RECORD SYSTEMS	6-9
1.	Criteria for a new record system	6-9
2.	Criteria for an altered record system	6-9
3.	Reports of new and altered systems	6-11
4.	Time restrictions on the operation of a new or altered system	6-11
5.	Outside review of new or altered systems reports	6-12
6.	Exemptions for new systems	6-12
7.	Waiver of time restrictions	6-12
E.	AMENDMENT AND DELETION OF SYSTEMS NOTICES	6-12
1.	Criteria for an amended system notice	6-12
2.	System notices for amended systems	6-13
3.	Deletion of system notices	6-13
4.	Submission of amendments and deletions for publication	6-13
	CHAPTER 7 - TRAINING REQUIREMENTS	7-1
	<u>SECTIONS</u>	
A.	STATUTORY TRAINING REQUIREMENTS	7-1
B.	OMB TRAINING GUIDELINES	7-1
C.	DoD TRAINING PROGRAMS	7-1
D.	TRAINING METHODOLOGY AND PROCEDURES	7-2
E.	FUNDING FOR TRAINING	7-2

CHAPTER 8 - REPORTS	<u>Page</u> 8-1	
<u>SECTIONS</u>		
A. REQUIREMENT FOR REPORTS	8-1	
B. SUSPENSE FOR SUBMISSION OF REPORTS	8-1	
c. REPORTS CONTROL SYMBOL	8-1	
CHAPTER 9 - INSPECTIONS	9-1	
<u>SECTIONS</u>		
A. PRIVACY ACT INSPECTIONS	9-1	
B. INSPECTION REPORTING	9-1	
CHAPTER 10 - PRIVACY ACT ENFORCEMENT ACTIONS	10-1	
A. ADMINISTRATIVE REMEDIES	10-1	
B. CIVIL ACTIONS	10-1	
c. CIVIL REMEDIES	10-1	
D. CRIMINAL PENALTIES	10-1	
E. LITIGATION STATUS SHEET	10-1	
CHAPTER 11 - MATCHING PROGRAM PROCEDURES	11-1	
<u>SECTIONS</u>		
A. OMB MATCHING GUIDELINES	11-1	
B. REQUESTING MATCHING PROGRAM	11-1	
c. TIME LIMITS FOR SUBMITTING MATCHING REPORTS	11-1	
D. MATCHING PROGRAMS AMONG DoD COMPONENTS	11-1	
E. ANNUAL REVIEW OF SYSTEMS OF RECORDS	11-2	
APPENDICES		
A. Special Considerations for Safeguarding Personal Information in ADP Systems		A-1
B. Special Considerations for Safeguarding Personal Information during Word Processing		B-1
c. DoD Blanket Routine Uses		c-1
D. Provisions of the Privacy Act from which a General or Specific Exemption may be claimed		D-1
E. Sample of new or altered system of record notice in <u>Federal Register</u> format		E-1
F. Format for new or altered system report		F-1

	<u>Page</u>
G. Sample deletions and amendment to systems notices in <u>Federal Register</u> format	G-1
H. Litigation status sheet	H-1
I. OMB Matching Guidelines	I-1

DEFINITIONS

1. Access. The review of a record or a copy of a record or parts thereof in a system of records by any individual (see also paragraph 7., below).
2. Agency. For the purposes of disclosing records subject to the Privacy Act among DoD Components, the Department of Defense is considered a single agency. For all other purposes to include applications for access and amendment, denial of access or amendment, appeals from denials, and record keeping as regards release to **non-DoD** agencies; each DoD Component is considered an agency within the meaning of the Privacy Act.
3. Confidential source. A person or organization who has furnished information to the federal government under an express promise that the person's or the organization's identity **will** be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.
4. Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.
5. Individual. A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a dead **person** under this Regulation and the term "individual" does not embrace an **individual** acting in an interpersonal capacity (for example, sole proprietorship or partnership).
6. Individual access. Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.
7. Maintain. Includes maintain, collect, use, or disseminate.
8. Official use. Within the context of this Regulation, this term is used when officials and employees of a DoD Component have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties, subject to DoD 5200.1-R (reference (a)).
9. Personal information. Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.
10. Privacy Act. The Privacy Act of 1974, as amended, 5 U.S.C. 552a (reference (b)).

11. Privacy Act request. A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records. The request must indicate that it is being made under the Privacy Act to be considered a Privacy Act request.

12. Member of the public. Any individual or party acting in a private capacity to include federal employees or military personnel.

13. Record. Any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

14. Risk assessment. An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity.

15. Routine use. The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

16. Statistical record. A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

17. System of records. A group of records under the control of a DoD Component from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the Federal Register.

18. Word processing system. A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator. The results are written or graphic presentations intended to communicate verbally or visually with another individual.

19. Word processing equipment. Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, hardwiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.